

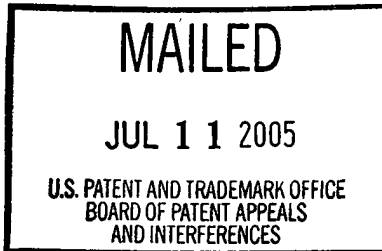
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte JAMES PANGERC and GREGORY SCOTT SNIDER



Appeal No. 2005-0664
Application No. 09/840,278

HEARD: JUNE 8, 2005

Before FRANKFORT, MCQUADE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 2-13, 16 and 18-21. Claim 15 has been indicated allowable and claim 14 stands objected to as depending from a rejected claim. No other claims are pending in this application.

BACKGROUND

The appellants' invention relates to storage containers. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Daneshvar	5,351,818	Oct. 4, 1994
Takama	5,553,710	Sep. 10, 1996
Spencer et al. (Spencer)	5,593,058	Jan. 14, 1997
Petruzzi	5,699,925	Dec. 23, 1997
Ratcliff	6,065,595	May 23, 2000

The following rejections are before us for review.

Claims 2-7 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Daneshvar in view of Ratcliff.

Claims 6-8, 19 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Daneshvar in view of Ratcliff and Takama.

Claim 9 stands rejected under 35 U.S.C. § 103 as being unpatentable over Daneshvar in view of Ratcliff and Petruzzi.

Claims 10, 11 and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Takama in view of Spencer and Daneshvar.

Claims 12 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Takama in view of Spencer and Daneshvar and further in view of Ratcliff.

Claim 21 stands rejected under 35 U.S.C. § 103 as being unpatentable over Ratcliff.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer

(mailed November 17, 2003) for the examiner's complete reasoning in support of the rejections and to the brief (filed September 8, 2003) and reply brief (filed December 31, 2003) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. For the reasons which follow, we cannot sustain any of the examiner's rejections.

We turn first to the rejection of independent claim 4, and claims 2, 3, 5-7 and 18 which depend therefrom, as being unpatentable over Daneshvar in view of Ratcliff. Claim 4 recites a base portion and a cover portion connected to one another by hinge portions and first and second inner lid portions each being connected by hinge portions to the base portion and cover portion, wherein the first and second inner lid portions include first and second latches for engaging the first and second inner lid portions to and disengaging the first and second inner lid portions from a respective one of the base portion and the cover portion. In other words, one of the first and second inner lid portions has a latch for engaging one of the base portion and the cover portion and the other of the first and second inner lid portions has a latch for engaging the other of the base portion and the cover portion. As correctly pointed out by the appellants on page

5 of their brief, neither Daneshvar nor Ratcliff teaches or suggests such a latching arrangement.

Daneshvar discloses a box having an upper lid 2 attached at hinge 13 to a body 1 and two plastic walls A and B also attached to each other and the body and lid at hinge 13. The plastic walls A and B are held together along their front edges 23, 25 by snaps 29, 33. Snaps X and Y, which are connected to the upper lid 2, hold plastic walls A and B in place. Daneshvar teaches, in the last paragraph of column 3, that:

With snaps 29 and 33 holding walls A and B together along front edges 25 and 23, and with walls A and B being hinged via hinge 13 along opposite edges, it should be appreciated that the snapped-together walls A and B form an inner lid that can be swung open and closed on body 1, as suggested by FIG. 9. As should also be appreciated, this inner lid will fit into, and swing open and closed in unison with outer lid 2 when the two lids are held together by means of snaps X and Y. When snaps 29, 33 are unsnapped, walls A and B can open, as in FIG. 9, to allow access to spaces 24, 26, 22.

Daneshvar's walls A, B lack the latches for engaging with the base portion (body) and cover portion (lid) as recited in claim 4.

Ratcliff discloses a fishing box comprising upper and lower mating segments 11, 13 hinged together by hinges 21, 23. The lower mating segment has a tray 32 disposed in a recess therein, the tray having two sub-compartments 41, 43 therein separated by a rib 45 which are covered by covers 51, 53 both hinged to the tray and latched to the closed position by a rotating latch 55 pivotally mounted on the rib 45. A

panel 83 is horizontally seated on seats 81 in the upper segment 11 to define an upper sub-compartment 85.

Daneshvar's walls A, B are snapped to one another by snaps 29, 33 and to the upper lid 2 by snaps X, Y. Neither wall A nor wall B is snapped or otherwise removably fastened to the body 1. Ratcliff, on the other hand, discloses two covers which are both latched to a tray in the lower segment 13. Neither reference teaches or suggests providing a container comprising first and second inner lid portions both hinged to the base portion and the cover portion and with the first and second inner lid portions having first and second latches for engaging the first and second inner lid portions to a respective one of the base portion and cover portion. Accordingly, we find no suggestion in the combined teachings of the references to modify Danishvar to provide a latch on wall B for engaging wall B to the upper lid 2 and a latch on wall A for engaging wall A to the body 1 to arrive at the subject matter of claim 4. We therefore cannot sustain the rejection of claim 4 or of claims 2, 3, 5-7 and 18 which depend from claim 4.

The examiner's application of Takama and Petruzzi provides no cure for the deficiency of the combination of Danishvar and Ratcliff. It thus follows that we also cannot sustain the rejections of claims 6-8, 19 and 20 as being unpatentable over Danishvar in view of Ratcliff and Takama and claim 9 as being unpatentable over Danishvar in view of Ratcliff and Petruzzi.

The examiner's rejection of claims 10, 11 and 16 as being unpatentable over Takama in view of Spencer and Daneshvar is grounded in part on the examiner's position that it would have been obvious to modify the dovetail tenons 22 or 32 of Takama's partition boards 2 or sub-partition boards 3 to add recessed portions in the end faces thereof and to add corresponding tabs in the walls which receive the dovetail tenons "to provide a connection between the end of the spacer and the wall it is connected to that is stronger and can better resist forces normal to spacer" (answer, page 5) in view of the dovetail recess and tab engagement arrangement taught by Spencer. Takama's partition boards 2 and sub-partition boards 3 have first and second end sections (the tenons) which have larger cross sections than the middle sections thereof but lack "recessed portions in an end face thereof" as required by claim 10. Simply stated, we find absolutely no suggestion in Spencer to add recesses in the end face of the dovetail tenons of Takama's partition boards 2 or sub-partition boards 3. The dovetail tenons 22, 32 of Takama appear to be sufficiently securely received in dovetail tenons 11 or 21 without the need for recesses in the end faces of the tenons. Both Takama and Spencer simply teach dovetail groove and dovetail tenon mating arrangements and neither teaches providing recesses in the tenons.

Daneshvar is applied by the examiner merely for its teaching of providing a cover for a container and provides no cure for the deficiency of Takama and Spencer

addressed above. Accordingly, the rejection of claims 10, 11 and 16 as being unpatentable over Takama in view of Spencer and Daneshvar cannot be sustained.

Further, the examiner's application of Ratcliff in rejecting claims 12 and 13, which depend from claim 10, fails to overcome the deficiency in the combination of Takama in view of Spencer and Daneshvar. It thus follows that the rejection of claims 12 and 13 as being unpatentable over Takama in view of Spencer, Daneshvar and Ratcliff also cannot be sustained.

We turn finally to the rejection of claim 21 as being unpatentable over Ratcliff. Claim 21 requires the at least one inner lid to comprise a body portion including a raised lip disposed on at least one of the opposite edges and a top edge thereof. Ratcliff does not disclose any such raised lip on the covers 51, 53 latched to the tray 31 disposed in the lower segment of the fishing box. While the examiner has cited two patents on page 8 of the answer, the examiner has not pointed to any teaching or suggestion in either Ratcliff or the patents cited on page 8 of the answer that a raised lip is necessary or desirable to strengthen the covers 51, 52 to prevent them from buckling.

Rejections based on 35 U.S.C. § 103 must rest on a factual basis. In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies

in the factual basis. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). Evidence of a suggestion, teaching or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, although the suggestion more often comes from the teachings of the pertinent references. The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence." In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference. See In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000).

In light of the foregoing, the examiner's conclusion of obviousness of the subject matter of claim 21 appears to stem from hindsight impermissibly gleaned from the appellants' disclosure and is not grounded on evidence in the record. The rejection of claim 21 cannot be sustained.

CONCLUSION

To summarize, the decision of the examiner to reject claims 2-13 and 16 and 18-21 under 35 U.S.C. § 103 is reversed.

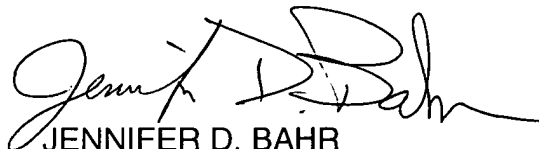
REVERSED



CHARLES E. FRANKFORT
Administrative Patent Judge



JOHN P. MCQUADE
Administrative Patent Judge



JENNIFER D. BAHR
Administrative Patent Judge

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